IN THE HIGH COURT OF JUDICTURE FOR RAJASTHAN AT

JODHPUR.

O R D E R

Kailash Chand Tak. Versus State of Rajasthan & ors.

S.B. Civil Writ Petition No. 6612/2005

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Date of Order: April 30, 2007

PRESENT

HON'BLE MR. JUSTICE H.R. PANWAR

Mr. P.S. Bhati, for the petitioner.
Mr. Rameshwar Dave, Deputy Govt. Advocate, for respondents.

BY THE COURT:

By the instant writ petition under Article 226 of the Constitution of India, the petitioner seeks a direction to the respondents to consider his case for promotion to the post of Senior Teacher/Teacher Grade II by counting his services from 21-3-1987.

I have heard learned counsel for the parties.

The facts and circumstances giving rise to the instant writ petition are that the petitioner was initially appointed on the post of Laboratory Assistant and in pursuance of the

appointment order, he joined the post on 21-3-1987 and continued to work on the post of Laboratory Assistant upto 30.4.1990. As per the averments made in para 2 of the writ petition, the petitioner was subsequently appointed on the post of teacher Grade III vide order dated 18-3-1987, however he was given appointment on the post of teacher Grade III vide order dated 31-3-1990 (Annx.2). In pursuance of the order Annx.2, he was directed to appear before the selection committee on 25-4-1990 and he appeared before the selection committee. The petitioner has not placed on record the order appointing him on the post of Laboratory Assistant, as also to document showing that he has served as Laboratory Assistant upto 30-4-1990, however he has annexed the order Annx.1 dated 18-3-1987 and on that basis, he stated in para 2 of the writ petition that presently he is working on the post of teacher Grade III in the Government Secondary School No.1, Merta City, district Nagaur. It is averred in the writ petition that the petitioner having possessed the requisite qualification, participated in the selection process for the post of teacher Grade III and was selected for the said post vide order dated 31-3-1990 (Annx.2) and in pursuance thereof, the respondents issued the order Annx.3 dated 26-4-1990 directing the persons named in Annx.3 to join the duty; however it was made clear that the salary for the summer vacation shall not be payable.

The respondents thereafter issued a corrigendum dated 21.5.1990, Annx.4, stating therein that the petitioner shall not be relieved and allowed to continue as Laboratory Assistant and he would be paid the salary for the summer vacation while working on the post of Laboratory Assistant. The petitioner has not placed on record any document showing his joining on the post of teacher Grade III.

A reply to the writ petition has been filed by the respondents stating therein that the posts of Laboratory Assistant and teacher Grade III are of different cadres and the appointment of the petitioner on the post of teacher Grade III was made through direct recruitment and, therefore, for the purpose of further promotion to the post of Senior Teacher or teacher Grade II, the initial date of appointment on the post of teacher Grade III has to be reckoned and not the date when the petitioner was initially appointed on the post of Laboratory Assistant. According to the reply filed by the respondents, the petitioner jointed the duty on the post of teacher Grade III on 13-4-1990 and thereafter on completion of ten years service on 13-4-2000, as per the Government Circulars, he was granted the senior scale by the State Government vide order dated 7-8-1998 with effect from 13-4-2000.

The posts of Laboratory Assistant and teacher Grade III are governed by different sets of rules and, therefore, the

seniority for consideration for promotion to the post of teacher Grade II or Senior Teacher has to be reckoned from the date the petitioner was initially appointed on the post of teacher Grade III and obviously even according to the petitioner himself, he was appointed as teacher grade III on 13-4-1990 and, therefore, for all the purposes of promotion to the post of Senior Teacher/Teacher Grade II, the initial date of appointment to the cadre, i.e. teacher Grade III has to be reckoned.

Learned counsel for the petitioner came with the case that one Tulsi Ram, who was also initially appointed on the post of Laboratory Assistant and the period of his services for promotion to the post of Senior Teacher/ teacher Grade II has been counted from the date of his initial appointment on the post of Laboratory Assistant. The respondents came with the case that though Tulsi Ram's appointment was on the post of Laboratory Assistant but his services were merged on the post of teacher Grade III by the competent authority of the respondents in pursuance of the order Annx.R/2 dated 29-7-1997 and, therefore, it was a case of merger of services and not a case of direct appointment to the post of teacher Grade III, whereas, according to the respondents, the petitioner's case is entirely different.

While serving on the post of Laboratory Assistant, the petitioner, as stated in the writ petition, having possessed

the requisite qualification, applied for the post of teacher Grade III in direct recruitment, participated in the selection process in direct recruitment and was successful and, therefore, appointed on the post of teacher Grade III and as such it was a case of fresh appointment and not a case of merger from the post of Laboratory Assistant to teacher Grade III as was the case of Tulsi Ram. It appears that Tulsi Ram's case was considered by the competent authority in pursuance of Annx.R/2 by merging the post of Laboratory Assistant to teacher Grade III, whereas the petitioner was initially appointed in direct recruitment on the post of teacher Grade III vide order dated 13-4-1990 and, therefore, his case is entirely different from the case of Tulsi Ram.

In this view of the matter, the services rendered by the petitioner as Laboratory Assistant cannot be counted for considerating his case for promotion to the post of Senior Teacher/teacher Grade II as the posts of Laboratory Assistant and Teacher Grade III are governed by different sets of rules. He cannot claim parity with Tulsi Ram, in whose case the post of Laboratory Assistant was merged to the post of Teacher Grade III, whereas the case of the petitioner is not that of merger but it is a case of appointment in direct recruitment to the post of teacher grade III vide order dated 13-4-1990 and the posts of Laboratory Assistant and teacher Grade III are governed by

different sets of rules.

Consequently, I do not find any merit in the writ petition and it is dismissed accordingly. The stay petition also stands dismissed. There shall be no order as to costs.

(H.R. PANWAR), J.

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